

REMARKS

Claims 1-13 and 37-50 are pending.

Claims 1-13 and 37-50 stand rejected.

Claim Rejections - 35 U.S.C. § 103

Claims 1-13 and 37-50 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 6,662,164 to Koppelman et al. ("*Koppelman*"). Applicants respectfully traverse the rejection.

Applicants respectfully submit that *Koppleman* is disqualified under 35 U.S.C. § 103(c) as prior art in a rejection under 35 U.S.C. § 103(a).

Koppelman qualifies as prior art under 35 U.S.C. § 102(e) and that the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

More specifically, Title 35 U.S.C. § 103(c)(1) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Koppelman was filed on May 19, 1998 and first published on December 9, 2003, the *Koppelman* issue date. The present application was filed on June 29, 2001. Thus, *Koppelman* qualifies as prior art under 35 U.S.C. § 102(e). Applicant submits that the present application and *Koppelman* were, at the time the present invention was made, owned by, or subject to an obligation of assignment to, Trilogy Development Group, Inc., i.e.:

The '164 Patent is assigned to the same assignee, Trilogy Development Group, Inc. In accordance with the Manual of Patent Examining Procedure § 306:

In the case of a division or continuation application, a prior assignment recorded against the original application is applied
>(effective)< to the division or continuation application because the

assignment recorded against the original application gives the assignee rights to the subject matter common to both applications.

Thus, the assignment to Trilogy Development Group, Inc. of the '164 Patent is also applied to *Koppelman*.

Since *Koppelman* and the claimed invention of the present application were, at the time the claimed invention was made, subject to an obligation of assignment to the same person, as evidenced by the common assignment to Trilogy Development Group, Inc. in the assignment documents filed in the '164 Patent and the Present Application, and *Koppelman* qualifies as prior art only under 35 U.S.C. § 102(e), in accordance with 35 U.S.C. § 103(c)(1), *Koppelman* cannot be used as part of a rejection based upon 35 U.S.C. § 103.

Thus, Applicant respectfully submits that *Koppelman* is not a proper reference against the present invention under 35 U.S.C. § 103.

Accordingly, Applicants respectfully request withdrawal of the rejection.

CONCLUSION

In view of the remarks set forth herein, the application is believed to be in condition for allowance and a notice to that effect is solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the examiner is requested to telephone the undersigned at 512-338-9100.

FILED ELECTRONICALLY
April 4, 2008

Respectfully submitted,

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